

AMENDED IN ASSEMBLY JUNE 12, 2014

AMENDED IN ASSEMBLY JUNE 2, 2014

AMENDED IN SENATE MAY 5, 2014

AMENDED IN SENATE APRIL 9, 2014

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 962

Introduced by Senator Leno

(Coauthors: Senators *DeSaulnier*, *Hancock*, *Pavley*, and *Wolk*)

(Principal coauthor: Assembly Member Skinner)

February 6, 2014

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as amended, Leno. Smart phones.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any smartphone, as defined, that is manufactured on or after July 1, 2015, and sold in California after that date, include a technological ~~solution~~, *solution at the time of sale*, which may consist of software, hardware, or both software and hardware, that, *once initiated and successfully communicated to the smartphone*, can render inoperable the essential features, as defined, of the smartphone to an unauthorized user when the smartphone is not in the possession of ~~the rightful owner~~, *an authorized user*. The bill would require that the technological solution, *when enabled*, be able to withstand a hard reset, as defined, and ~~when enabled~~, prevent reactivation of the

smartphone on a wireless network except by ~~the rightful owner or his or her~~ *an authorized designee, user*. The bill would make these requirements inapplicable when the smartphone is resold in California on the secondhand market or is consigned and held as collateral on a loan. ~~The bill would prohibit the sale of a smartphone that is manufactured on or after July 1, 2015, and sold in California after that date, unless, during the initial device set-up process, the smartphone's default setting is to prompt the user to enable the technological solution. The bill would authorize the rightful owner~~ *an authorized user* to ~~affirmatively elect to opt-out of the technological solution during the initial device set-up process and to~~ *disable the technological solution at any time, any time*. The bill would make ~~a~~ *the* knowing *retail sale in* violation of the bill's requirements ~~by a retail entity~~ subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation. The bill would limit an enforcement action to being brought by the Attorney General, a district attorney, or city attorney, and would prohibit any private right of action to enforce the bill's requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the Federal Communications Commission,
- 4 smartphone thefts now account for 30 to 40 percent of robberies
- 5 in many major cities across the country. Many of these robberies
- 6 often turn violent with some resulting in the loss of life.
- 7 (b) Consumer Reports projects that 1.6 million Americans were
- 8 victimized for their smartphones in 2012.
- 9 (c) According to the New York Times, 113 smartphones are
- 10 lost or stolen every minute in the United States.
- 11 (d) According to the Office of the District Attorney for the City
- 12 and County of San Francisco, in 2012, more than 50 percent of all
- 13 robberies in San Francisco involved the theft of a mobile
- 14 communications device.
- 15 (e) Thefts of smartphones in Los Angeles increased 12 percent
- 16 in 2012, according to the Los Angeles Police Department.
- 17 (f) According to press reports, the international trafficking of
- 18 stolen smartphones by organized criminal organizations has grown

1 exponentially in recent years because of how profitable the trade
2 has become.

3 (g) In order to be effective, antitheft technological solutions
4 need to be ubiquitous, as thieves cannot distinguish between those
5 mobile communications devices that have the solutions enabled
6 and those that do not. As a result, the technological solution should
7 be able to withstand a hard reset or operating system downgrade,
8 come preequipped, and the default setting of the solution shall be
9 to prompt the ~~user~~ *consumer* to enable the solution during the
10 initial device setup. Consumers should have the option to
11 affirmatively elect to disable this ~~protection~~ *protection, but it must*
12 *be clear to the consumer that the function the consumer is electing*
13 *to disable is intended to prevent the unauthorized use of the device.*

14 SEC. 2. Section 22761 is added to the Business and Professions
15 Code, to read:

16 22761. (a) For purposes of this section, the following terms
17 have the following meanings:

18 (1) (A) “Smartphone” means a cellular radio telephone or other
19 mobile voice communications handset device that includes all of
20 the following features:

21 (i) Utilizes a mobile operating system.
22 (ii) Possesses ~~advanced computing capability~~ *the capability to*
23 *utilize mobile software applications, access and browse the*
24 *Internet, utilize text messaging, utilize digital voice service, and*
25 *send and receive email.*

26 (iii) Has wireless network connectivity.
27 (iv) Is capable of operating on a long-term evolution network
28 ~~and or~~ *successor* wireless data network communication standards.

29 ~~(B) A smartphone may possess, but is not limited to, the~~
30 ~~following capabilities:~~

31 ~~(i) Built-in mobile software applications.~~
32 ~~(ii) Internet access.~~
33 ~~(iii) Digital voice service.~~
34 ~~(iv) Text messaging.~~
35 ~~(v) The ability to send and receive electronic mail.~~
36 ~~(vi) Internet Web site browsing.~~
37 ~~(C)~~

38 (B) A “smartphone” does not include a radio cellular telephone
39 commonly referred to as a “feature” or “messaging” telephone, a

1 laptop, a tablet device, or a device that only has electronic reading
2 capability.

3 (2) “Essential features” of a smartphone ~~include~~ *are* the ability
4 to use the device for voice communications, *text messaging*, and
5 the ability to browse the Internet, including the ability to access
6 and use mobile software applications ~~commonly known as “apps.”~~
7 *applications*. “Essential features” ~~does~~ *do* not include any
8 functionality needed for the operation of the technological ~~solution.~~
9 *solution, nor does it include the ability of the smartphone to access*
10 *emergency services by a voice call or text to the numerals “911,”*
11 *the ability of a device to receive wireless emergency alerts and*
12 *warnings, or the ability to call an emergency number predesignated*
13 *by the owner.*

14 (3) “Hard reset” means the restoration of a smartphone to the
15 state it was in when it left the factory, and refers to any act of
16 returning a smartphone to that state, including processes commonly
17 termed a factory reset or master reset.

18 (4) ~~“Sold in California”~~ *California,” or any variation thereof,*
19 means that the smartphone is sold at retail from a location within
20 the state, or the smartphone is sold and shipped to an end-use
21 consumer at an address within the state. “Sold in California” does
22 not include a smartphone that is resold in the state on the
23 secondhand market or that is consigned and held as collateral on
24 a loan.

25 (b) (1) Any smartphone that is manufactured on or after July
26 1, 2015, and sold in California after that date, shall include a
27 technological ~~solution,~~ *solution at the time of sale*, to be provided
28 by the manufacturer or operating system provider, that, *once*
29 *initiated and successfully communicated to the smartphone*, can
30 render the essential features of the smartphone inoperable to an
31 unauthorized user when the smartphone is not in the possession
32 of ~~the rightful owner.~~ *an authorized user. The smartphone shall,*
33 *during the initial device set-up process, prompt an authorized user*
34 *to enable the technological solution.* The technological solution
35 shall be reversible, so that if ~~the rightful owner~~ *an authorized user*
36 obtains possession of the smartphone after the essential features
37 of the smartphone have been rendered inoperable, the operation
38 of those essential features can be restored by ~~the rightful owner or~~
39 ~~his or her authorized designee.~~ *an authorized user.* A technological
40 solution may consist of software, hardware, or a combination of

1 both software and hardware, ~~but shall be able to withstand a hard~~
2 ~~reset, and when enabled, shall be able to withstand a hard reset~~
3 ~~or operating system downgrade and shall prevent reactivation of~~
4 ~~the smartphone on a wireless network except by the rightful owner~~
5 ~~or his or her authorized designee. No smartphone that is~~
6 ~~manufactured on or after July 1, 2015, may be sold in California~~
7 ~~after that date unless, during the initial device setup process, the~~
8 ~~smartphone's default setting is to prompt the user to enable the~~
9 ~~technological solution. an authorized user.~~

10 (2) ~~The “essential features” that are required to be rendered~~
11 ~~inoperable pursuant to this subdivision do not include the ability~~
12 ~~of the smartphone to access emergency services by a voice call or~~
13 ~~text to the numerals “911,” the ability of a device to receive~~
14 ~~wireless emergency alerts and warnings, and the ability to call an~~
15 ~~emergency number predesignated by the owner.~~

16 (3)

17 (2) ~~The rightful owner~~ *An authorized user* of a smartphone may
18 ~~affirmatively elect to opt-out of the technological solution during~~
19 ~~the initial device set-up process and may~~ disable the technological
20 solution at ~~anytime.~~ *any time.* However, the physical acts necessary
21 to disable the technological solution may only be performed by
22 the end-use consumer or a person specifically selected by the
23 end-use consumer to disable the technological solution.

24 (c) ~~A retail entity that knowingly sells~~ *The knowing retail sale*
25 *of* a smartphone in California in violation of subdivision (b) may
26 be subject to a civil penalty of not less than five hundred dollars
27 (\$500), nor more than two thousand five hundred dollars (\$2,500),
28 per device sold in California. A suit to enforce this section may
29 only be brought by the Attorney General, a district attorney, or a
30 city attorney. *A failure of the technological solution due to hacking*
31 *or other third-party circumvention may be considered a violation*
32 *for purposes of this subdivision, only if, at the time of sale, the*
33 *seller had received notification from the manufacturer or operating*
34 *system provider that the vulnerability cannot be remedied by a*
35 *software patch or other solution.* There is no private right of action
36 to enforce this section.

37 (d) ~~The seller of a smartphone, its employees, and its agents,~~
38 ~~are not liable to any person for civil damages resulting from, or~~
39 ~~caused by, failure of a technological solution, including any hack~~
40 ~~or other third-party circumvention of the technological solution.~~

1 ~~A failure due to hacking or other third-party circumvention may~~
2 ~~be considered a violation for purposes of subdivision (c), only if,~~
3 ~~at the time of sale, the seller had received notification from the~~
4 ~~manufacturer that the failure existed and that it cannot be remedied~~
5 ~~by a patch or other technological solution.~~

6 *(d) The retail sale in California of a smartphone shall not result*
7 *in any civil liability to the seller and its employees and agents from*
8 *that retail sale alone if the liability results from or is caused by*
9 *failure of a technological solution required pursuant to this section,*
10 *including any hacking or other third-party circumvention of the*
11 *technological solution, unless at the time of sale the seller had*
12 *received notification from the manufacturer or operating system*
13 *provider that the vulnerability cannot be remedied by a software*
14 *patch or other solution. Except as provided in subdivision (c),*
15 *nothing in this subdivision precludes a suit for civil damages on*
16 *any other basis outside of the retail sale transaction, including,*
17 *but not limited to, a claim of false advertising.*

18 (e) Any request by a government agency to interrupt
19 communications service utilizing a technological solution required
20 by this section is subject to Section 7908 of the Public Utilities
21 Code.

22 (f) Nothing in this section prohibits a network operator, device
23 manufacturer, or operating system provider from offering a
24 technological solution or other service in addition to the
25 technological solution required to be provided by the device
26 manufacturer or operating system provider pursuant subdivision
27 (b).

28 (g) Nothing in this section requires a technological solution that
29 is incompatible with, or renders it impossible to comply with,
30 obligations under state and federal law and regulation related to
31 any of the following:

32 (1) The provision of emergency services through the 911 system,
33 including text to 911, bounce-back messages, and location accuracy
34 requirements.

35 (2) Participation in the wireless emergency alert system.

36 (3) Participation in state and local emergency alert and public
37 safety warning systems.